IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9351 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUMARBHAI PARMANAND KAMRA

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR KT DAVE, AGP, for Respondents No. 1, 2 & 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. District Magistrate, Vadodara, passed an order on September 28, 1999, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act"

for short), detaining the petitioner under the provisions of the said Act. The petitioner challenges that order by this petition under Article 226 of the Constitution.

2. The grounds of detention indicate that, during inspection, the petitioner was found to be indulging into activity of converting blue kerosene into white and thereby adversely affecting the supply of essential commodities like kerosene and, therefore, the detaining authority came to conclusion that he is required to be detained under the provisions of the PBM Act in order to prevent him from continuing such activities.

3. The petitioner has challenged the order of detention on various counts. The main ground is delay in considering representation by the State Government as well as the Central Government and non-application of mind by the Central Government. Mr. Thakkar, learned advocate appearing for Ms. Pahwa, learned advocate for the petitioner, has restricted his arguments to the above points only. He submitted that the District Magistrate, Baroda, passed the order on 28th September, 1999, which was approved by the State Government on 8th October, 1999. Report was sent by State Government on 11th October, 1999 and received by the Central Government on 13th October, 1999. A representation was made on behalf of the detenu on November 6, 1999. The Central Government received the same on November 9, 1999 and called for the parawise remarks of the State Government on November 11, 1999. Remarks were sent by the State Government on 25th November, 1999, which was received by the Central Government on 1st December, 1999. Mr. Thakkar, therefore, submitted that there was a delay on part of the State Government in sending parawise remarks. The remarks were called by the Central Government telegraphically on November 11, 1999. Still, however, the State Government forwarded the same to the Central Government on 25th November, 1999 and no explanation in this regard is tendered.

3.1 Mr. Thakkar submitted further that, so far as Central Government is concerned, it already had report of the State Government on detention, which was received on 13th October, 1999. The representation was received by the Central Government on 9th November, 1999 and, as such, there was no need for calling for the parawise remarks. If at all remarks were required to be called for, the authority ought to have stated in the affidavit as to what prompted the authority to call for parawise remarks. This is expected to indicate that there was application of mind. Mr. Thakkar submitted further that

is also not clear as to whether the parawise remarks were called for after application of mind by the competent authority and, therefore also, the continued detention would stand vitiated. Relying on the decision in the case of R. Paulsamy v. Union of India and Others, (1999) 4 SCC 415, Mr. Thakkar submitted that the petition may be allowed and the detenu may be ordered to be released forthwith.

4. Mr. K.T. Dave, learned Assistant Government Pleader appearing for the State of Gujarat and the detaining authority, has opposed this petition. He submitted that the telegram was received by the State Government from the Central Government on 16th November, 1999 and, thereafter, the parawise remarks of the detaining authority were called for and, on receiving the same, the parawise remarks were immediately forwarded to the Central Government by the State Government on 25th November, 1999. As such, there is no delay on part of the State Government. The petition may, therefore, be dismissed.

5. Ms. Davawala, learned Additional Central Government Standing Counsel, has opposed this petition on behalf of the Central Government. She submitted that the parawise remarks were called for as the same were required to be considered by the Central Government while exercising supervisory jurisdiction. The petition may, therefore, be dismissed. She has drawn attention of this Court to the affidavit in reply filed on behalf of the Central Government by one Mr. R.C. Dhankar, Under Secretary in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi.

6. Having regard to the contentions raised by the parties, the first and foremost aspect that emerges is that the Central Government already had report of the State Government on detention, which was received on 13th October, 1999 and, therefore, when the parawise remarks were called for by the Central Government upon receiving the representation, it was expected of the authority concerned to have stated in the affidavit as to what prompted it to call for the parawise remarks. Further the affidavit does not indicate whether the parawise remarks were called for after application of mind by the competent authority of the Central Government. If the parawise remarks were called for without the representation being considered by the competent authority on question of the need for calling for the parawise remarks, it reflects non-application of mind by competent authority and thereby non-consideration of the

representation in time. The continued detention would, therefore, stand vitiated. In the instant case, there is nothing to indicate that the competent authority had considered the representation and then decided to call for the parawise remarks. The detention, therefore, would stand vitiated as has been held in the case of R. Paulsamy (supra).

7. The above grounds are sufficient for quashing the order of detention and Mr. Thakkar, therefore, does not press for a verdict on the other arguments advanced by him.

8. In view of the above discussion, the petition is allowed. The impugned order of detention dated 28th September, 1999 is hereby quashed. The detenu-Kumarbhai Parmanand Kamra is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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